

Did Not Pass

MONTANA LEGISLATIVE HISTORY

Chapter 19 77

Bill H 466 s _____ Original bill & history c

H. Committee on Judiciary

Hearing Date(s) 2-21 C

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6

S. Committee on _____

Hearing Date(s) _____ C

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Date Out _____ C _____

Did this bill originate in an interim committee? Yes No

Committee

Report _____

HOUSE BILL NO. 466
INTRODUCED BY DRISCOLL

4 A BILL FOR AN ACT ENTITLED: "AN ACT DECLARING THAT THE
5 OPEN-PIT EXTRACTION OF METALLIC ORES IS NOT AN UNRESTRICTED
6 PUBLIC PURPOSE FOR WHICH PROPERTY MAY BE TAKEN BY EMINENT
7 DOMAIN AND SETTING THE PUBLIC POLICY THEREFOR; AMENDING
8 SECTION 93-9902, R.C.M. 1947."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 93-9902, R.C.M. 1947, is amended to
12 read as follows:

13 #93-9902. What are public uses. Subject to the
14 provisions of this chapter, the right of eminent domain may
15 be exercised in behalf of the following public uses:

16 1. All public uses authorized by the government of the
17 United States.

18 2. Public buildings and grounds for the use of the
19 state, and all other public uses authorized by the
20 legislative assembly of the state.

21 3. Public buildings and grounds for the use of any
22 county, city, or town, or school districts; canals,
23 aqueducts, flumes, ditches, or pipes conducting water, heat,
24 or gas for the use of the inhabitants of any county, city,
25 or town; raising the banks of streams, removing obstructions

1 therefore, and widening, deepening, or straightening their
2 channels; roads, streets, and alleys, and all other public
3 uses for the benefit of any county, city, or town, or the
4 inhabitants thereof, which may be authorized by the
5 legislative assembly; but the mode of apportioning and
6 collecting the costs of such improvements shall be such as
7 may be provided in the statutes or ordinances by which the
8 same may be authorized.

9 4. Wharves, docks, piers, chutes, booms, ferries,
10 bridges, of all kinds; private roads, plank and turnpike
11 roads, railroads, canals, ditches, flumes, aqueducts, and
12 pipes for public transportation; supplying mines, mills, and
13 smelters for the reduction of ores and farming neighborhoods
14 with water, land, drainage and reclaiming lands, and for
15 floating logs and lumber on streams not navigable, and sites
16 for reservoirs, necessary for collecting and storing water.
17 Provided, however, that such reservoir sites must possess a
18 public use demonstrable to the district court as the highest
19 and best use of the land.

20 5. Roads, tunnels, ditches, flumes, pipes, and dumping
21 places for working mines, mills, or smelters for the
22 reduction of ores; also outlets, natural or otherwise, for
23 the flow, deposit, or conduct of tailings or refuse matter
24 from mines, mills and smelters for the reduction of ores,
25 also an occupancy in common by the owners or the possessors

1 of different mines of any place for the flow, deposit, or
 2 conduct of tailings or refuse matter from their several
 3 mines, mills, or smelters for reduction of ores, and sites
 4 for reservoirs necessary for collecting and storing water.
 5 Provided, however, that such reservoir sites must possess a
 6 public use demonstrable to the district court as the highest
 7 and best use of the land.

8 6. Private roads leading from highways to residences
 9 or farms.

10 7. Telephone or electric light lines.

11 8. Telegraph lines.

12 9. Sewerage of any city, county, or town, or any
 13 subdivision thereof, whether incorporated or unincorporated,
 14 or of any settlement consisting of not less than ten (10)
 15 families, or of any public buildings belonging to the state,
 16 or to any college or university.

17 10. Tramway lines.

18 11. Electric power lines.

19 12. Logging railways.

20 13. Temporary logging roads and banking grounds for
 21 the transportation of logs and timber products to public
 22 streams, lakes, mills, railroads, or highways, for such time
 23 as the court or judge may determine; provided, the grounds
 24 of state institutions be excepted.

25 14. Underground reservoirs suitable for storage of

1 natural gas.

2 15. To mine and extract ores, metals or minerals owned
 3 by the plaintiff located beneath or upon the surface of
 4 property where the title to said surface vests in others;
 5 provided, however, the use of the surface for strip
 6 mining or open pit mining of coal (i.e., any mining method
 7 or process in which the strata or overburden is removed or
 8 displaced in order to extract the coal) is not a public use
 9 and eminent domain may not be exercised for this purpose."

10 Section 2. There is a new R.C.M. section that reads as
 11 follows:

12 Policy on open pit mining of metallic ores. (1) The
 13 state's power to exercise the right of eminent domain for
 14 the purpose of open pit mining of metallic ores shall be
 15 severely restricted and shall be utilized only in extremely
 16 limited cases. However, due to the economic impact of mining
 17 and the nature of some mining technologies, the use of
 18 eminent domain for open pit mining must occasionally be
 19 permitted, but only after close scrutiny by an ad hoc board
 20 of necessity. This board shall be formed upon request of the
 21 plaintiff to the governor of Montana. The request shall be
 22 made after 2 week's notice in newspapers distributed in the
 23 area to be mined. The board shall be composed of five
 24 members appointed as follows:

25 (a) One member shall be appointed by the governor of

1 Montana.

2 (b) One member shall be appointed by the county
3 commissioners governing the area where the property is
4 located.

5 (c) One member shall be appointed by the plaintiff.

6 (d) One member shall be appointed by the surface
7 rights owner.

8 (e) One member shall be appointed by the state
9 district court of the area where the property is located.

10 (2) The board of necessity shall approve or disapprove
11 the sites-specific use of condemnation. This action may be
12 taken only after reviewing the following criteria:

13 (a) The underlying reasons for the mining company's
14 decision to develop the metallic ore properties beneath the
15 area in question with open pit techniques; and

16 (b) The feelings of the populace in the area
17 surrounding the development as to the proposed expansion of
18 the open pit mine; and

19 (c) The highest and best use of land surface in
20 question.

21 (3) All expenses incurred by the ad hoc board of
22 necessity shall be borne by the plaintiff. The approval or
23 disapproval of the ad hoc committee shall be final, and in
24 the event a favorable decision is rendered, normal
25 condemnation proceedings shall be instituted.

HOUSE JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 455	providing for the duties of personal representatives or special administrators in estates - alien heirs	2-11	Meloy	Fri 18	do pass as amended	2-19
HB 466	open-pit extraction of metallic ores is not an unrestricted public purpose etc. eminent domain	2-11	Driscoll	Monday 21	do not pass	2-22
HB 486	amend Montana water use act to facilitate appropriation of water rights for wildlife or recreational uses.	2-11	Frates	Fri 18	do not pass	2-24
HB 457	clarifying the powers of attorney general and county attorneys under the Montana unfair trade practices etc.	2-11	Vincent	Fri 18	do pass	2-23
HB 758	to avoid jurisdictional conflict between states in child custody proceedings etc.	2-11	South	Fri 18	do pass	2-19
HB 759	provide that local political subdivision shall reimburse dept. natural resources for its cost - floodplain etc.	2-11	Day	Tues 15 <u>water</u>	do pass	2-19

JUDICIARY COMMITTEE

EXECUTIVE SESSION
February 22, 1977

The executive session was called to order by Chairman Scully, on Tuesday, February 22, 1977 at 7:00 a.m., in room 436 of the Capitol Building, Helena, Montana. All members were present with the exception of Representatives Day, Dussault, and Teague.

HOUSE BILL #777:

REPRESENTATIVE LORY moved "do pass".

REPRESENTATIVE ROTH moved a substitute motion, "do not pass". A roll call vote was taken and the motion carried 9 to 6 with Representative Lory voting "no".

HOUSE BILL #778:

REPRESENTATIVE LORY moved "do not pass".

The motion carried with Representative Holmes voting "no".

Representative Dussault came in.

HOUSE BILL #774:

REPRESENTATIVE DUSSAULT moved "do not pass".

The motion carried with the vote unanimous.

HOUSE BILL #705:

REPRESENTATIVE SEIFERT moved "do not pass".

REPRESENTATIVE DUSSAULT moved to amend on page 3, line 3.

After some discussion the amendments carried with the vote unanimous. In going back to the original motion of "do not pass" the motion carried with Representatives Kennerly and Dussault voting "no".

Representative Day came in.

HOUSE BILL #466:

REPRESENTATIVE RAMIREZ moved "do not pass".

The motion carried with Representatives Day, Holmes and Courtney voting "no".

HOUSE BILL #200:

REPRESENTATIVE RAMIREZ presented proposed amendments from the sub-committee, and moved their adoption. The motion carried.

REPRESENTATIVE RAMIREZ moved "do pass as amended".

The motion carried with Representatives Keyser, Seifert and Courtney voting "no". (copy of amendments attached)

HOUSE BILL #334:

REPRESENTATIVE RAMIREZ moved the adoption of the committee report of the proposed amendments, (adding a new subsection). Motion carried.

REPRESENTATIVE SEIFERT moved "do not pass".

REPRESENTATIVE KEYSER moved a substitute motion of "do pass as amended". The motion carried with the following representatives voting "no". Representatives Courtney, Roth, Seifert, Hand and Day. (attached)

Strike: subsections (4) and (5) in their entirety.

Insert: "(4) A person convicted of the offense of deceptive business practices shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

And as amended, do pass. Report adopted.

HB 747, introduced bill, be amended as follows:

1. Amend title, line 5.

Following: "to"

Insert: "make every effort to"

2. Amend page 5, section 1, subsection (4)(b), line 20.

Following: "shall"

Insert: "make every effort to"

3. Amend page 5, section 1, subsection (4)(b), line 23.

Following: "Montana."

Insert: "These efforts shall include the active and diligent seeking out of such qualified mortgage investments within the state."

And as amended, do pass. Report adopted.

Mular present at this time.

On motion by Scully, and in accordance with the 24-hour rule, the adverse committee report on HB 466 was adopted by the following vote:

Ayes: R. Baeth, W. Baeth, Barrett, Bengtson, Bertelsen, Colburn, Conroy, Cox, Dassinger, Davis, Day, Ellis, Ernst, Eudaily, Fagg, Feda, Gerke, Gilligan, Gould, Halvorson, Hand, Hansen, Harper, Hirsch, Hurwitz, Jensen, Johnston, Kanduch, Kennerly, Kenny, Kessler, Keyser, Kimble, Kropp, Kvaalen, Lory, Lund, Lynch, McLane, Manuel, Marks, Meyer, Mular, Nathe, O'Keefe, Pistoria, Porter, Quilici, Ramirez, Robbins, Roth, Ryan, Scully, Severson, Shelden, Sivertsen, Smith, Stobie, Teague, Tower, Tropila, Uhde, Underdal, Vinger, Williams, Wood, Wyrick.

Total 67

Noes: Bardanouye, Bradley, Brand, Cooney, Curtiss, Dussault, Estenson, Frates, E. Gunderson, J. Gunderson, Holmes, Huennekens, Lien, Meloy, Metcalf, Staigmiller, Turner, Vincent, Mr. Speaker.

Total 19

Excused: Ellerd, Menahan, Moore.

Total 3

Absent or not voting: Aageson, Burnett, Courtney, Ellison, Fabrega, Harrington, O'Connell, Palmer, Seifert, South, Waldron.

Total 11

On motion by Scully, and in accordance with the 24-hour rule, the adverse committee report on HB 705 was adopted by the following vote:

Ayes: R. Baeth, W. Baeth, Bardanouye, Barrett, Bengtson, Bertelsen, Bradley, Colburn, Conroy, Cox, Curtiss, Dassinger, Davis, Day, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Feda, Gerke, Gilligan, Gould, J. Gunderson, Halvorson, Hand, Hirsch, Huennekens, Hurwitz, Jensen, Johnston, Kanduch, Keyser, Kimble, Kropp, Kvaalen, Lien, Lory, Lund, Lynch, McLane, Manuel, Marks, Meloy, Meyer, Nathe, O'Keefe, Pistoria, Porter, Quilici, Robbins, Roth, Scully, Seifert, Severson, Shelden, Sivertsen, Smith, South, Staigmiller, Stobie, Teague, Tower, Tropila, Turner, Uhde, Underdal, Vinger, Waldron, Williams, Wood, Wyrick, Mr. Speaker.